

Message Text

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ACTION OPIC-12

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FM AMEMBASSY MOGADISCIO

TO SECSTATE WASHDC IMMEDIATE 2092

UNCLAS MOGADISCIO 1120

FOR OPIC FOR MRS. COLE

E.O. 11652: N/A

TAGS: EINF EFIN US SO

SUBJ: OPIC/PRODMA

REF: MOGADISCIO 1118

1. EMBASSY HAS OBTAINED FROM OPIC LAWYER DRAFT TEXT OF SALE AGREEMENT HE WILL BRING TO MIN FISHERIES PROPOSED FINAL DISCUSSIONS AND SIGNATURE JULY 16. DRAFT SUBSTANTAILLY IN ACCORD WITH DESCRIPTION REFTEL, AND EMBASSY WILL PROCEED AS OUTLINED REFTEL.

2. DRAFT TEXT AS FOLLOWS:

THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN OVERSEAS PRIVATE INVESTMENT CORPORATION, WHOSE PRINCIPAL PLACE OF BUSINESS IS IN WASHINGTON, D.C., UNITED STATES OF AMERICAN (HEREINAFTER CALLED "OPIC") AND THE GOVERNMENT OF THE SOMALI DEMOCRATIC REPUBLIC (HEREINAFTER CALLED "GSDR") WHEREAS, OPIC, BEING THE DULY AUTHORISED SUCCESSOR-IN-INTEREST TO FEARN FOODS INC. BY REASON OF THE LIQUIDATION OF PRODMA, IS THE HOLDER OF THE ASSETS OF THE SAID PRODMA AT KISMAYO.

WHEREAS AGREEMENT WAS REACHED BETWEEN MR. BASHIR AHMED GARDAD, DIRECTOR GENERAL OF THE MINISTRY OF FISHERIES, AND MARINE TRANSPORT OF THE SOMALI DEMOCRATIC REPUBLIC AND MR. JOHN HOVELER, REPRESENTATIVE OF OPIC AS EVIDENCED BY THE FORMER'S

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LETTER REFERENCE NO. WKGB/1/G-8/3 DATED 8TH OCTOBER,

1973 AND THE LETTER OF THE CHIEF STATE COUNSEL, MR. ABDULAH I SAEK OSMAN DATED 10TH OCTOBER, 1973 FOR THE SALE BY OPIC OF PRODMA'S ASSETS (EXCLUDING THE BUNKERING FACILITIES ALREADY NATIONALIZED BY THE GSDR, COMPENSATION FOR WHICH IS PENDING PAYMENT AS EVIDENCED IN THE LETTER OF THE CHIEF OF STATE COUNSEL REFERRED TO ABOVE) TO THE GSDR FOR THE PURPOSE PRICE OF THE UNITED STATES DOLLAR EQUIVALENT OF TWO MILLION SOMALI SILLINGS; THE LETTERS REFERRED TO ABOVE AS WELL AS THE REGISTERED RESOLUTION FOR THE LIQUIDATION OF PRODMA BEING ATTACHED HERETO AS ANNEX "A" "B" AND "C" AND MADE PART OF THIS AGREEMENT.

WHEREAS BOTH PARTIES TO THIS AGREEMENT ARE DESIROUS OF CONCLUDING A FINAL AGREEMENT ON BASIS AND TERMS INDICATED ABOVE.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:-

1. THE GSDR WILL PAY TO OPIC IN FULL THE UNITED STATES DOLLAR EQUIVALENT OF TWO MILLION SOMALI SHILLINGS (WITH NO REDUCTIONS, CHARGES OR OFFSETS WHATSOEVER) AT THE RATE OF EXCHANGE, AS DETERMINED BY THE SOMALI NATIONAL BANK, IN EFFECT ON THE DATE OF PAYMENT.

2. PAYMENT OF THE PURCHASE PRICE WILL BE EFFECTED BY CABLE TRANSFER OF UNITED STATES DOLLARS FROM THE SOMALI NATIONAL BANK TO SUCH BANK IN THE UNITED STATES AS THE SOMALI NATIONAL BANK MAY DESIGNATE FOR OPIC'S ACCOUNT WITHIN FORTY EIGHT HOURS FROM THE SIGNATURE OF THIS AGREEMENT BY BOTH PARTIES.

3. UPON SIGNATURE OF THIS AGREEMENT, THE GSDR AGREES TO TAKE IMMEDIATE POSSESSION OF, AND ALL RESPONSIBILITY FOR, THE PRODMA SEAFOOD PROCESSING PLANT AT KISMAYO, SOMALI DEMOCRATIC REPUBLIC AS WELL AS ALL ANCILLARY ASSETS AND EQUIPMENTS AS LISTED BELOW:... (LIST OMITTED THIS TELEGRAM)...

THEREAFTER, OPIC WILL HAVE NO FURTHER RESPONSIBILITY FOR THE GUARDING, CARE OR MAINTENANCE THEREOF NOR ANY FURTHER LIABILITY WHATSOEVER WITH RESPECT TO THESE ASSETS WITH THE EXCEPTION THAT OPIC WILL PAY REASONABLE AND VERIFIABLE TERMINATION BENEFITS WHICH MAY BE DUE TO THE SECURITY GUARDS EMPLOYED AT THE SAID PLANT AT KISMAYO.

4. BOTH PARTIES AGREE THAT THE LEGAL TITLE TO PRODMA'S ASSETS SHALL REMAIN VESTED IN OPIC UNTIL SUCH TIME AS OPIC RECEIVES THE PURCHASE PRICE TRANSFERRED IN ACCORDANCE WITH PARAGRAPH 2
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OF THIS AGREEMENT. UPON SUCH RECEIPT, HOWEVER, TO BE EVIDENCED BY PROMPT NOTIFICATION BY OPIC, LEGAL TITLE SHALL PASS TO THE GSDR.

5. BOTH PARTIES FURTHER AGREE THAT THE SEAFOOD PROCESSING PLANT AT KISMAYO AS INSPECTED AND SUBSTANTIALLY OPERATED BY ENGINEER MOHAMED HAJI ABDI WHO WAS COMMISSIONED BY OPIC AND OBSERVED BY THE DIRECTOR OF FISHERIES OF THE SOMALI MINISTRY

OF FISHERIES AND MARINE TRANSPORT, IS FREE FROM INHERENT DEFECTS
AND IS, SUBSTANTIALLY, IN GOOD OPERATIONAL CONDITION.
KIRK

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